



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 060078

Petitioner, David Schechter, applied to the Building Commissioner for permission to construct a second floor addition to his home at 60 Kensington Circle. The application was denied and an appeal was taken to this Board.

On November 16, 2006, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and originally fixed January 18, 2007, at 7:15 p.m., as the time and place of a hearing on the appeal in the Selectmen's Hearing room on the sixth floor of the Town Hall. Notice of the scheduled hearing was mailed to the Petitioner, to his attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published November 30, 2006 and December 7, 2006, in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **David and Gail SCHECHTER**
Location of Premises: **60 KENSINGTON CIR BRKL**
Date of Hearing: **01/18/2007**
Time of Hearing: **7:15 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th. Floor**

A public hearing will be held for a variance and/or special permit from: **1) 5.20; FLOOR Area Ratio, Variance Required and 2) Board of Appeals Decision; Case #030032, dated July 7, 2003, Modification Required** of the Zoning By-Law to construct a second floor addition per plans at **60 KENSINGTON CIR, BRKL**.

Said Premise located in a **S-10** district.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the **ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.***

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Bailey Silbert**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Diane Gordon and Board members Enid Starr and Bailey Silbert.

Attorney Jeffrey Allen of Seegel Lipshutz and Walchins, 20 Williams Street, Suite 130, Wellesley, MA presented the case for the homeowner. Mr. Allen described the project as simple as to facts; the enclosing of an existing second floor porch thereby creating an additional 143 s.f. of habitable space. He stated that since the home already meets the maximum FAR of .36 with 3,915 s.f., relief in the form of a variance is required. He stated that owing to the unusual shape of the lot, triangular, his client meets the burden for relief in the form of a variance. Mr. Allen went on to say that most of the Schechter's neighbors

were in support of the project as demonstrated by the letters submitted to the Board. At the request of the Planning Board, Mr. Schechter retained an Architect, Mr. Mark Neilson, to verify the FAR of their home. Mr. Neilson in a sealed letter dated 16 January 2007 verified that the proposed ...”addition would increase the home’s FAR to approximately .37”.

The Chair then asked if anyone wished to speak in favor or opposition to the project. Mr. Robert Franklin of 145 Lagrange Street rose to speak. He stated that he was speaking on the behalf of his elderly mother who is a direct abutter to the Schechter’s at 80 Kensington Circle. Mr. Franklin stated that his parents had lived at this address since 1969 and he was speaking neither in support nor opposition to the request relief. He stated that his mother wished to be a good neighbor but since her lot is similar to the Schechter’s he was not sure whether the requested relief met the statutory grounds for a variance. Mr. Franklin stated that he commends the Schechter’s for utilizing the prescribed legal process under the by-law for the relatively small incremental relief.

Ms. Polly Selkoe, Assistant Director for Regulatory Planning, described the property at 60 Kensington Circle is a Colonial-style, wood clapboard house. Built in 1942, it is a single-family house with two stories and a slate gable roof. The parcel on which 60 Kensington Circle sits is a pie-shaped lot – the smallest of three such lots at the intersection of Kensington Circle and Arlington Road, near the town border with Newton. The lot is irregularly shaped but meets the 10,000 s.f. minimum lot requirement of its zoning district. She stated that the applicant is proposing to construct a 143 s.f., second-floor addition to a single-family house. The proposed addition will be located to the rear of the house, and will be created by enclosing an existing second-floor porch. The addition will be utilized

as a walk-in closet, and interior renovations of existing habitable space will be made to remove a bathroom and create a laundry room on the second floor. The exterior of the addition will feature a pitched slate roof, white clapboard siding, and double-sash windows to match the existing exterior of the house. Ms. Selkoe described the required relief as follows:

Section 5.20 Floor Area Ratio

| | Allowed | | Existing | Proposed | Relief |
|-------------------|----------|-------------------|----------|-------------|------------------|
| | By Right | By Special Permit | | | |
| F.A.R | 0.30 | 0.36 | 0.36 | 0.37 | VARIANCE* |
| Floor Area (s.f.) | 3,263 | 3,915 | 3,915 | 4,058 | - |

* Under **Section 5.22.3.b.1.b, with amendments adopted in spring 2006**, the Board may allow by special permit an exterior addition up to 120% of the permitted gross floor area so long as the maximum allowed FAR of 120% has not been reached. **In this case, the applicant exceeds the maximum allowed FAR by special permit, thus the application will require a variance.**

Ms. Selkoe stated that the Planning Board has no objection to this proposal to construct a 143 s.f., second floor addition to the house. The addition is small in size and will be constructed on top of an existing deck, inside the footprint of the existing house. The lot on which the structure sits is of an irregular “pie” shape, which creates hardship in meeting setback requirements for an addition. The proposed addition is attractive and integrates well into the massing of the existing building. Additionally, large trees and shrubs line the perimeter of the rear property line, which will provide screening for adjacent properties to the east and west. She stated that if the Board of Appeals finds that the statutory requirements for a variance are met, the Planning Board recommends approval of the plans titled “Schechter Residence Addition”, prepared by Esoteric Residential Design, Inc., dated September 19, 2006, redated October 11, 2006, subject to the following conditions:

1. **A certified measurement of existing and proposed FAR shall be submitted prior to the Board of Appeals hearing.**
2. **Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions stamped and signed by a registered architect or land surveyor as provided already, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

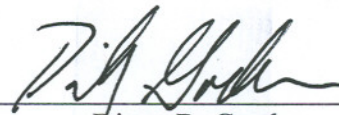
The Chair then called on Mr. Frank Hitchcock, speaking on the behalf of the Building Department. Mr. Hitchcock stated that the homeowner was before the Board before, case # 030032, for Special Permit relief under 5.20, floor area ratio and 5.09, design review. The requested relief was granted and subsequently extended in case #040053. He stated that currently the home was at the maximum FAR for the district, .36. Mr. Hitchcock described the existing second floor deck as being shaded by trees, deteriorating due to moisture conditions and not useable in its current state. He said that the proposed project will not decrease any current setback, all of which conform to the requirements of the by-law. Mr. Hitchcock stated that this was a modest request and that the Building Department had no objection to the proposal, requested relief or the conditions recommended by the Planning Board.

Board Member Enid Starr stated that the Board can grant relief in the form of a Variance where the Board specifically finds that owing to circumstances relating to soil conditions, shape, or topography of such land but not effecting generally the zoning district in which it is located, a literal enforcement of the by-law would involve substantial hardship to the petitioner and granting of the relief would not be detrimental to the public good nor nullify or substantially derogate the intent or purpose of the by-law. After discussion the Board agreed that the petitioner met the requirements for relief in the form

of a variance and voted unanimously to grant the requested relief with the following condition:

Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions stamped and signed by a registered architect or land surveyor as provided already, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

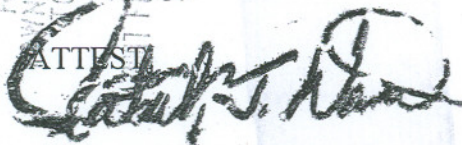


Diane R. Gordon

Filing Date: February 2, 2007

A True Copy

ATTEST



Patrick J. Ward
Clerk, Board of Appeals